

In the Supreme Court of Iowa

Request for Public Comment on)
Proposed Nonsubstantive Restyling)
of the Iowa Rules of Evidence)

CLERK SUPREME COURT
Order

The Iowa Supreme Court seeks public comment on a proposed nonsubstantive restyling of the Iowa Rules of Evidence, chapter 5 of the Iowa Court Rules.

I. Background and Federal Restyling Project.

The Iowa Rules of Evidence historically have largely patterned the Federal Rules of Evidence. The Federal Rules of Evidence were “restyled,” or rewritten, to be simpler, more consistent, and easier to use and became effective in December 2011. The restyled federal rules are broken down into more subparts, reduce the use of inconsistent terms (“accused” and “defendant”; “party opponent” and “opposing party”), reduce the use of ambiguous words (replaces “shall” with “must,” “may,” or something else, depending upon context), minimize the use of intensifiers, remove redundancies, and are better edited. *See generally, The Restyled Federal Rules of Evidence*, 53 William & Mary L Rev 1435 (2012). At the same time, all sacred phrases of evidence law are retained to ensure applicability of prior case law.

The federal evidence rules restyling was the final effort of a decades-long project of the Judicial Conference Standing Committee on Rules of Practice and Procedure to bring more clarity and consistency in the style conventions of federal procedural rules, including the Federal Rules of Appellate Procedure, Federal Rules of Criminal Procedure, and the Federal Rules of Civil Procedure. An overriding concern and perhaps the greatest challenge during the federal restyling effort was to avoid any amendment to the rules that could be deemed a substantive change.

As a result of the restyling of the Federal Rules of Evidence, the Iowa Rules of Evidence now employ language different from the federal rules. To bring the Iowa rules in line with their current federal counterparts and to achieve a more consistent, easier-to-use, and plain English-oriented set of rules, the Iowa Supreme Court has embarked on a nonsubstantive restyling of the Iowa Rules of Evidence.

II. Restyling the Iowa Rules of Evidence.

Iowa Supreme Court Justice Brent R. Appel chairs the restyling of the Iowa Rules of Evidence project. The effort began with supreme court staff conducting a side-by-side comparison of the former federal rules, the restyled federal rules, and the current Iowa rules of evidence. Court staff then prepared an initial restyled version of the Iowa rules patterned after the federal restyling and noting potential substantive differences from the Iowa rules and the federal rules.

With this progress in hand, the supreme court formed the Iowa Supreme Court Working Group on the Restyling of the Rules of Evidence (working group). The members of the working group included:

Brent R. Appel—Justice, Iowa Supreme Court
Michael Bennett—Iowa Attorney General's Office
Laurie Dore—Professor, Drake Law School
Rebecca Ebinger—Judge, 5th Judicial District of Iowa, now serving
as U.S. District Court Judge for the Southern District of Iowa
Michael Giudicessi—Attorney, Faegre & Benson
John-Mark Stensvaag—Professor, University of Iowa College of Law

The court's charge to the working group was to review and adopt into the Iowa rules the restyled federal rules language unless there was a compelling reason not to do so or there was a potential or actual substantive difference in the rules, while retaining substantively unique Iowa rule language. The working group reviewed materials providing background information and insight on the federal rules restyling effort. The working group met four times in person reviewing and amending the

initial draft restyling of each rule in late spring and early summer 2015.

The result of this part of the restyling process is the working group's drafting document, accompanying this order, which sets forth the Iowa Rules of Evidence in a strikethrough and underscore format showing the federal and federal-like restyling incorporated into the Iowa rules. This drafting document also contains text boxes wherever substantive distinctions occur. The text boxes set forth the federal rule immediately after its Iowa counterpart and a discussion of how the two rules might substantively depart.

There are more than a dozen current Iowa evidence rules that are substantively different from parallel federal rules. A main challenge in the restyling effort is to draft Iowa specific rules that are consistent with federal restyling conventions but preserve the substantive meaning of the current Iowa rule. In restyling these distinctive Iowa rules, the working group took great care to avoid unintended substantive consequences of word choice and grammatical structure.

The supreme court discussed the restyling project early in its 2015 administrative term and again in detail toward the end of the administrative term.

III. Substantive Amendments to the Iowa Rules of Evidence.

The supreme court is also in the process of expanding the working group identified above to form an advisory committee for the purpose of addressing the substantive differences of the Iowa Rules of Evidence from the federal rules and whether there should be substantive changes made to the Iowa rules. This is a project separate from the nonsubstantive restyling effort. At a later date, after the newly-formed advisory committee has made recommendations to the supreme court regarding substantive matters with the Iowa rules, the public will be asked to

submit comments regarding any substantive amendment proposals from the advisory committee.

IV. Request for Public Comment on Nonsubstantive Restyling of the Iowa Rules of Evidence.

Prior to further consideration, the supreme court seeks public comment on the proposed restyled Iowa Rules of Evidence. Two versions of the proposed nonsubstantive restyling of chapter 5 of the Iowa Court Rules accompany this order and may be found on the Iowa Judicial Branch website at: [www.iowacourts.gov/About the Courts/Supreme Court/Orders/](http://www.iowacourts.gov/About%20the%20Courts/Supreme%20Court/Orders/). One version is a clean set of the restyled evidence rules. The other version is the drafting document discussed above, which shows the actual proposed amendments and includes rule text boxes providing explanatory information on the amendments.

Any interested organization, agency, or person may submit comments regarding the proposed restyling. Comments about the proposed amendments should be limited to the nonsubstantive restyling effort. The court, however, welcomes comments that identify a potential substantive difference from a current rule compared to the proposed restyled rule that the restyling may have created and that is not noted in the textboxes of the drafting document.

All comments must refer to the specific rule number (for example, rule 5.804) and the specific numbered line or lines to which the comments refer. Comments sent by email must be emailed to **rules.comments@iowacourts.gov**, must state **“Restyled Evidence Rules”** in the subject line of the email, and must be sent **as an attachment to the email in Microsoft Word format**. Instead of submission by email, comments may be delivered in person or mailed to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East

Court Avenue, Des Moines, Iowa 50319.

Any comments received may be posted on the Iowa Judicial Branch website.

The deadline for submitting comments on the nonsubstantive restyling of the Iowa Rules of Evidence is 4:30 p.m. on July 15, 2016.

Dated this 2nd day of May, 2016.

The Supreme Court of Iowa

By Mark S. Cady
Mark S. Cady, Chief Justice